February 2006

Update: Criminal Procedure Monograph 6—Pretrial Motions (Third Edition)

Part 2—Individual Motions

6.36 Motion to Suppress Evidence Seized Pursuant to a Defective Search Warrant

Insert the following case summary before the paragraph beginning with "The good-faith exception to the exclusionary rule..." on page 98:

Even where a search warrant is based in part on tainted evidence obtained as a result of an officer's Fourth Amendment violation—"fruit of the poisonous tree"—the good-faith exception to the exclusionary rule may apply to evidence seized pursuant to the warrant if "'an objectively reasonable officer could have believed the seizure valid.'" *United States v McClain*, 430 F3d 299, 308 (CA 6, 2005), quoting *United States v White*, 890 F2d 1413, 1419 (CA 8, 1989).

In *McClain*, after a nearby resident reported that lights were on at an unoccupied house in the neighborhood, police officers searched the residence without a warrant and without having probable cause to conduct a search of the residence. *McClain, supra* at 302–303. Officers entered the residence through a door that was "slightly ajar" even though the officers "observed no movement in or around the home, no signs of forced entry or vandalism, and no suspicious noises or odors emanating from the house." *Id*. at 305–306. During their warrantless search of the home, the officers discovered evidence that the basement was being readied to house "a marijuana-grow operation." *Id*. at 303. Because no exception to the warrant requirement justified the warrantless search, the defendant argued that any evidence seized during the "execution of search warrants issued on the basis of evidence obtained as a result of that initial warrantless search" should be suppressed. *Id*. at 301.

The district court agreed with the defendant and suppressed the evidence. *McClain, supra* at 301–302. The Sixth Circuit Court of Appeals concluded that the good-faith exception to the exclusionary rule applied to the evidence

seized as a result of the "tainted" search warrant and reversed the district court's decision. *Id*. at 302, 307. According to the Sixth Circuit:

> "The facts surrounding these officers' warrantless entry into the house at 123 Imperial Point were not sufficient to establish probable cause to believe a burglary was in progress, but we do not believe that the officers were objectively unreasonable in suspecting that criminal activity was occurring inside [the defendant's] home, and we find no evidence that the officers knew they were violating the Fourth Amendment by performing a protective sweep of the home. More importantly, the officers who sought and executed the search warrants were not the same officers who performed the initial warrantless search, and [the officer's] warrant affidavit fully disclosed to a neutral and detached magistrate the circumstances surrounding the initial warrantless search. . . . . Because the officers who sought and executed the search warrants acted with good faith, and because the facts surrounding the initial warrantless search were close enough to the line of validity to make the executing officers' belief in the validity of the search warrants objectively reasonable, we conclude that despite the initial Fourth Amendment violation, the [good faith] exception bars application of the exclusionary rule in this case." *McClain, supra* at 308–309.

Part 2—Individual Motions

6.37 Motion to Suppress Evidence Seized Without a Search Warrant

1. Searches of Automobiles for Evidence

Insert the following text after the second paragraph on page 101:

In the context of automobile searches, a computer may be considered a container of the data stored in the computer's memory. *People v Dagwan*, ___ Mich App ___, ___ (2005).